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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF MASSACHUSETTS

4  
5 IN RE: NEW ENGLAND COMPOUNDING ) MDL NO. 13-02419-RWZ  
6 PHARMACY CASES LITIGATION )  
7 )  
8 )

9 BEFORE: THE HONORABLE RYA W. ZOBEL AND  
10 THE HONORABLE JENNIFER C. BOAL  
11

12 **STATUS CONFERENCE**  
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15  
16 John Joseph Moakley United States Courthouse  
17 Courtroom No. 12  
18 One Courthouse Way  
Boston, MA 02210

19 May 28, 2015  
20 2:00 p.m.  
21

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(Appearances continued on the next page.)

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1 P R O C E E D I N G S

2 (The following proceedings were held in open court before  
3 the Honorable Rya W. Zobel, United States District Court Judge,  
4 and the Honorable Jennifer C. Boal, Magistrate Judge, United  
5 States District Court, District of Massachusetts, at the John J.  
6 Moakley United States Courthouse, One Courthouse Way, Boston,  
7 Massachusetts, on May 28, 2015.)

8 JUDGE ZOBEL: Good afternoon. Please be seated.

9 COURTROOM DEPUTY CLERK URSO: This is In Re: New  
10 England Compounding. It's MD-13-2419.

11 JUDGE ZOBEL: Good afternoon.

12 I guess we should start with some indication of  
13 counsel who are going to speak. Ms. Johnson I know. Who else  
14 is going to speak?

15 MR. GASTEL: Ben Gastel on behalf of the Plaintiffs'  
16 Steering Committee, your Honor.

17 MS. DOUGHERTY: Kim Dougherty on behalf of the  
18 Plaintiffs' Steering Committee, your Honor.

19 MS. MARTIN: Annika Martin, as pro se liaison, your  
20 Honor.

21 JUDGE ZOBEL: I'm sorry?

22 MS. MARTIN: Annika Martin as pro se liaison.

23 JUDGE ZOBEL: Yes. And anybody else? Yes, Mr.  
24 Gottfried.

25 MR. GOTTFRIED: Michael Gottfried, counsel for the

1 trustee, Paul Moore.

2 MS. TAYLOR: Kiersten Taylor, counsel for the  
3 Creditor's Committee.

4 MS. PUIG: Your Honor, Yvonne Puig, the St. Thomas  
5 Entities.

6 MS. GREER: And Marcy Greer for the St. Thomas  
7 Entities.

8 MR. WOLK: Your Honor, Christopher Wolk, Blumberg &  
9 Wolk, on behalf of the Premier defendants.

10 JUDGE ZOBEL: Is that it?

11 (No response.)

12 JUDGE ZOBEL: Okay.

13 MR. KIRBY: Your Honor, this is Greg Kirby. I'm on  
14 the phone, if you can hear me.

15 JUDGE ZOBEL: I can hear you.

16 MR. KIRBY: I represent the Box Hill defendants.

17 JUDGE ZOBEL: Okay. And you plan to be heard?

18 MR. KIRBY: Yes.

19 JUDGE ZOBEL: Okay. Anybody else?

20 (No response.)

21 JUDGE ZOBEL: All right. We have an agenda and I  
22 guess we'll start with that. I have some other matters to  
23 discuss with you, but we'll start with your agenda.

24 MS. JOHNSON: Thank you, your Honor.

25 I would actually suggest that we deviate from the

1 agenda just slightly. I think it would be helpful to give the  
2 Court an overview of -- now that the confirmation order has  
3 been entered by Judge Boroff, of where we are, of who the  
4 parties were that had to come together to get there and,  
5 finally, where we go next.

6 JUDGE ZOBEL: When does the confirmation order become  
7 effective or is it effective now?

8 MR. GOTTFRIED: June 4th.

9 JUDGE ZOBEL: I'm sorry?

10 MR. GOTTFRIED: June 4th.

11 JUDGE ZOBEL: June 4th it becomes effective?

12 MR. GOTTFRIED: Yes, your Honor.

13 MS. JOHNSON: Yes, your Honor.

14 If I may, I have a schedule of the deadlines that are  
15 set by the confirmation order I would like to hand up to the  
16 Court.

17 (Attorney Johnson hands document to the Court.)

18 JUDGE BOAL: If I could just ask. Maybe it's in the  
19 paperwork, but in terms of Judge Nieman, my understanding is  
20 that his appointment needs to be made within 30 days of the  
21 effective date of the plan.

22 MS. JOHNSON: That's correct, your Honor. Before the  
23 PSC or the trustee -- I'm not sure who moves on that, but  
24 before that motion can be presented to you, there must first  
25 be a motion to withdraw the reference that gives this Court

1 jurisdiction to then appoint Judge Nieman. So, one of the  
2 things that the PSC is working on actively is the motion to  
3 withdraw the reference, which you'll be seeing shortly, and  
4 then once the reference has been withdrawn, as contemplated by  
5 the plan, there'll be a separate motion to have Judge Nieman  
6 appointed.

7 JUDGE ZOBEL: Okay. Would you have another copy of  
8 these papers?

9 MS. JOHNSON: Yes, your Honor.

10 JUDGE ZOBEL: One for the two law clerks, please.

11 MR. GASTEL: If I may, your Honor, I'll --

12 JUDGE ZOBEL: Do you need one, Catherine?

13 (Discussion off the record at the Bench.)

14 MS. JOHNSON: Okay. So, let's take it from the top.

15 So, Judge Boroff entered the confirmation order on  
16 May 20th. The effective date then becomes June 4th. So,  
17 where do we go from there?

18 The plan creates a tort trust for the benefit of tort  
19 claimants. This Court is familiar with that because we've  
20 already been through the tort trustee appointment process.

21 I will note the Court issued an order appointing  
22 Lynne Riley tort trustee. She's now actively engaged with  
23 those responsibilities.

24 There was a minor typo, however, in that submission  
25 that the PSC made to the Court where we reported that Ms.

1 Riley's rate was \$325 an hour in one portion of our pleadings.  
2 Ms. Riley's submission, which was also provided to the Court,  
3 indicates it's \$350 an hour. So, we think this was just an  
4 inadvertent typo, but we did want to be clear to the Court  
5 that her rate is \$350 an hour.

6 The trustee will first pay fees and expenses out of  
7 the settlement pot and then pay non-tort creditors as  
8 described in the plan. Not all non-tort creditors are in fact  
9 paid, but those who are paid are paid first. Once that  
10 happens, the funds then pour over into the tort trust and that  
11 money is then reserved for the benefit of tort victims.

12 The tort trust will be funded by the contributions  
13 that we've discussed before, but a total of approximately \$130  
14 million in estimated contributions to the national pot, which  
15 are made by a combination of NECC's owners and shareholders,  
16 NECC's insurers, Ameridose's insurers, GDC, ARL and its  
17 insurer, Victory and its insurer, Unifirst and its insurers,  
18 Liberty and its insurers, all combined into an estimated, low  
19 end, of \$130 million. There's some variability in that  
20 settlement amount because it includes contemplated tax refunds  
21 that will occur in the future. If those refunds come to pass,  
22 it's estimated that that will increase the total amount of the  
23 national pot to \$157 million, give or take.

24 We then have three put into specific pots. Each of  
25 those pots is separate. Those total \$59 million and are



1 comprised of contributions from High Point, a North Carolina  
2 clinic; Inspira, a New Jersey clinic; and Insight, a Virginia  
3 clinic.

4 JUDGE ZOBEL: Now, the claimants, the plaintiffs, who  
5 are from one of those three states will take only from the  
6 specific pot that -- the pots that you've just mentioned?  
7 They will not participate in the national pot, or will they?

8 MS. JOHNSON: That's not correct, your Honor.  
9 Everyone is entitled to participate in the national pot. Then  
10 individuals who were injected at one of those three clinics  
11 may participate separately and additionally in the pot for  
12 their particular clinic where they were injected.

13 JUDGE ZOBEL: Okay.

14 MS. JOHNSON: So, I'd like to take a moment to think  
15 about all of the entities, individuals and lawyers who had to  
16 come together in order to pull off this settlement.

17 So, in addition to the contributing entities that I  
18 rattled through, all of those entities had multiple layers of  
19 lawyers. Each had an insurer, oftentimes multiple insurers.  
20 All of them had to agree and sign off on these agreements.

21 The individual defendants had to agree to turn over  
22 the proceeds of their individual insurance policies as well.  
23 They all had multiple levels of attorneys.

24 The PSC's lawyer and the PSC's designated counsel,  
25 including Mr. Ellis, who the Court hears from regularly, were

1 heavily involved and had to approve the settlements and total  
2 amounts. We also were involved in the process of determining  
3 the procedures by which those funds would ultimately be  
4 allocated, as were the official committee of creditors and  
5 their counsel, and the clinic settlements. Each clinic had a  
6 handful of lawyers representing different doctors as well as  
7 the corporate entities and the insurers.

8 As a result of this, a plan was put together that  
9 then received overwhelming support by tort victims. Over 99  
10 percent of tort victims voted in favor of the plan.

11 Of the approximately 3500 creditors who were entitled  
12 to vote, about 2600 creditors voted for the plan. Only 25  
13 voted against.

14 In the end, there were no objections to the plan,  
15 even from those defendants who are currently defending cases  
16 in front of this Court.

17 The U.S. trustee originally filed an objection some  
18 had called tepid, but conceded during confirmation hearing  
19 that it believed the plan proponents had met their burden to  
20 make out the remarkable circumstances that warranted the  
21 third-party releases at issue here.

22 The co-chair of the credit committee filed a limited  
23 objection which was withdrawn upon confirmation that  
24 circumstantial evidence would be considered as proof of  
25 injection under the existing plan.

1           The Tennessee Clinic Defendants and St. Thomas  
2 initially objected out of fear that the plan would affect  
3 their ability to identify NECC and other settling parties as  
4 comparative fault entities on a verdict slip, but language was  
5 compromised -- a compromise of language was reached with the  
6 trustee and, in exchange, those defendants withdrew their  
7 objection.

8           So, everybody likes it and we're all happy. It was a  
9 tremendous amount of work to get there. So, where are we now?

10          On the bankruptcy side of things, the money that  
11 we've talked about will eventually pour into the tort trust.  
12 At that point a common benefit award, if any, will be dealt  
13 with.

14          As a reminder, this Court has issued an order  
15 requiring an eight percent holdback. That is a holdback,  
16 though. It is not an allocation or an award in and of itself.

17          Lead counsel, Tom Sobol, has already solicited  
18 submissions from all plaintiffs' attorneys who believe they've  
19 done common benefit work and is personally reviewing those  
20 submissions currently. I mean, not right now, but this week  
21 it was on his desk.

22          And we expect to have a motion to the Court to be  
23 presented before the next status conference addressing a  
24 common benefit award, if any.

25          Claim packages will be mailed to victims in June, by

1 June 18th. The claim packages for most of the settlements  
2 will be mailed. The Inspira -- I'm sorry -- the Insight  
3 deadline is a little behind that, but, in general, in June and  
4 July the claim packages will be sent out. From there, victims  
5 will submit claims. Those claims will be processed as they  
6 are received.

7 The deadline, however -- the deadline for submitting  
8 claim forms is not until October 2nd. So, even though the  
9 work is done as they come in, it's not until October 2nd that  
10 the total number of points claimed can be calculated. At that  
11 point there will be an estimate of the amount of points and  
12 the dollars that will go to each claimant and interim  
13 payments, we are hopeful, will be mailed by year-end. That is  
14 an optimistic statement, your Honor. It requires everything  
15 to run smoothly and there are not to be any wrinkles, but we  
16 are very optimistic that the initial interim payments will be  
17 made by year-end.

18 JUDGE ZOBEL: Do you know at this point what  
19 percentage of the whole the interim payments will represent?

20 MS. JOHNSON: No, we do not, and I am reluctant to  
21 estimate, your Honor, in part because you have a tax refund  
22 issue. You just don't know how big the deposit is going to be.

23 The claims are then paid out according to the claim  
24 resolution facilities that are incorporated into the plan  
25 itself. So, in terms of how people will be compensated and

1 how many points you're awarded for a particular injury  
2 category, all of that has now been confirmed and adopted by  
3 Judge Boroff in entering the confirmation order.

4 There are slightly different procedures for each  
5 clinic settlement, but, by in large, the broad strokes track  
6 the same settlement process for the national settlement class.

7 So, that's where we go with the bankruptcy  
8 settlement.

9 JUDGE ZOBEL: Do you anticipate the same timeline for  
10 the three separate, Inspira and Insight and whatever --  
11 Premier or whatever the third one was?

12 MS. JOHNSON: Because the claim facility procedures  
13 are a little bit different for each of the clinics, your  
14 Honor, I would be reluctant as I'm sitting here to estimate  
15 the timeframe for those pay-outs, but, recall, that everyone  
16 who is getting a pay-out in one of the three clinic  
17 settlements would also be getting a pay-out from the national.  
18 So, at minimum, all victims should be -- to the extent they're  
19 getting money, all victims will be getting something by the  
20 end of the year.

21 So, turning back to the MDL. So, where do we go now  
22 with the MDL?

23 The vast majority of cases that are currently in this  
24 MDL will ultimately be dismissed as a result of this  
25 settlement. Most of the cases in this MDL name only settling

1 defendants. So, what's left?

2 The primary goal of the MDL now, as the PSC sees it,  
3 is to conduct common discovery of the national defendants who  
4 are contributing to the settlement pot and ensure that all of  
5 that common discovery material is placed into a single central  
6 repository.

7 Now, Judge Boal spent too much time, frankly -- she  
8 was very kind to us this morning -- listening to arguments and  
9 discovery disputes about what that discovery should entail;  
10 whether there will be depositions or not depositions, whether  
11 there are documents that need to be compelled. We see that as  
12 the primary function of this MDL now, is putting our arms  
13 around all of what is truly common discovery from the settling  
14 defendants, which includes NECC, Ameridose, GDC, the  
15 individual Insiders, as well as ARL, Unifirst, Liberty, any of  
16 the other settling defendants.

17 Now, the PSC feels very strongly -- and I probably  
18 said it too often -- that this common discovery of the  
19 settling defendants should be done once and only once and it  
20 should be done efficiently, should be centralized and then it  
21 should be done. Meaning, there should be a deadline by which  
22 that discovery is completed.

23 JUDGE ZOBEL: Who is conducting this discovery of the  
24 settling defendants? Is it PSC or the individual plaintiffs  
25 or is it primarily the other defendants?

1 MS. JOHNSON: By in large, the PSC has concluded  
2 taking discovery of the settling defendants. The PSC is still  
3 engaged in lots of other discovery of other non-parties and  
4 the defendants in this case that have not settled, but, by in  
5 large, we have concluded what we think we need in order for us  
6 to preserve plaintiffs' rights to take the common discovery  
7 from settling defendants.

8 What you are seeing primarily are defendants in the  
9 MDL serving discovery on settling defendants to bolster their  
10 comparative fault defenses, and the Court and many of the  
11 lawyers in this room heard a number of arguments this morning  
12 about that, but, by in large, it is discovery to help  
13 comparative -- establish comparative fault.

14 JUDGE ZOBEL: By comparative fault, you mean  
15 entitlement to contribution?

16 MS. JOHNSON: Not quite, your Honor. Understanding  
17 that the --

18 JUDGE ZOBEL: Talking about comparative fault to be  
19 between plaintiff and defendant?

20 MS. JOHNSON: No, your Honor. So, Tennessee has a  
21 unique statutory scheme and while I do not profess to be an  
22 expert in that scheme, broadly speaking -- and Mr. Gastel will  
23 correct me if I get this wrong -- under Tennessee law for...

24 (Discussion off the record.)

25 MS. JOHNSON: ...for not the products claims, for the

1 other products claims, Tennessee has a statute that permits a  
2 defendant to identify other parties who bear fault on the  
3 verdict slip and actually ask the jurors to assign the amount  
4 of fault --

5 JUDGE ZOBEL: And they call that comparative fault?

6 MS. JOHNSON: That's correct, your Honor. That's  
7 correct.

8 So, it is an effort by -- so, the discovery that's  
9 being done of the settling defendants is an effort to help  
10 primarily the Tennessee, also the New Jersey, defendants  
11 bolster their comparative fault defenses and be able at the  
12 end of the day to give the jurors a jury slip that says it's  
13 not all our fault, tell us how much fault is their fault, and  
14 then the Tennessee defendants' liability is reduced by that  
15 percentage.

16 JUDGE ZOBEL: I guess I don't fully understand how  
17 the settling defendants' conduct fits into that, because the  
18 settling defendants, presumably, had nothing to do with the  
19 Tennessee defendants.

20 MS. JOHNSON: As I understand it, your Honor,  
21 although I'm trying to pick a simple example, the Tennessee  
22 defendants intend to say it's NECC's fault because they sold  
23 the poison product --

24 JUDGE ZOBEL: That I can understand.

25 MS. JOHNSON: -- and it's their fault.



1 JUDGE ZOBEL: But how about the settling defendants  
2 other than NECC?

3 MS. JOHNSON: You would have to ask the Tennessee  
4 defendants, your Honor.

5 MS. GREER: Your Honor, Marcy Greer for the Tennessee  
6 defendants.

7 And I, too, am not an expert on Tennessee law, but  
8 the concept is --

9 JUDGE ZOBEL: You represent them.

10 MS. GREER: Exactly, but I -- so, I just want to be  
11 clear on that point, but the way that it works --

12 JUDGE ZOBEL: Well, I'm still not clear. If you  
13 represent them, you should be clear on Tennessee law.

14 MS. GREER: I'm clear on how this will work and what  
15 we're trying to accomplish.

16 JUDGE ZOBEL: Okay.

17 MS. GREER: And that is, to put the other defendants  
18 -- they won't be responsible. They won't have to pay at the  
19 end of the day, but on the verdict form we're entitled to  
20 submit the defendants -- the people who are responsible for  
21 what happened, all of them, and --

22 JUDGE ZOBEL: Yes, but let me just --

23 MS. GREER: -- we have to establish a case against  
24 them.

25 JUDGE ZOBEL: Let me just focus you.

1 I understand how Tennessee might want to know  
2 something about NECC. I do not understand how Tennessee  
3 defendants can benefit from the Virginia defendants'  
4 settlement.

5 MS. GREER: Not the Virginia defendants. Only the  
6 national.

7 JUDGE ZOBEL: So, when you talk about getting  
8 discovery from other defendants, you're talking about the  
9 Framingham defendants?

10 MS. GREER: Only the national defendants. Not just  
11 Framingham. Also the entities that cleaned -- that designed  
12 and constructed the clean rooms, that maintained them. All of  
13 those defendants, who are the national defendants, are part of  
14 this discussion.

15 JUDGE ZOBEL: Okay. Now I understand.

16 At some point there was a question raised about what  
17 law would govern the trial in this case. Would it be useful,  
18 Ms. Johnson, to get a decision on that here? That is, would  
19 it be useful to consider what is the choice of law, if and  
20 when any of these cases go back because the defendants won't  
21 agree to have them tried here?

22 MS. JOHNSON: Absolutely, your Honor. That would be  
23 incredibly helpful.

24 JUDGE ZOBEL: In that case, let us establish a  
25 schedule for doing that.

1 MS. JOHNSON: Terrific.

2 JUDGE ZOBEL: Would it be possible for -- I mean, I  
3 assume the plaintiffs should take the burden -- the initial  
4 burden and then the defendants who are interested in this can  
5 respond. And I was thinking about a schedule whereby  
6 somewhere around mid June you would let me know what your  
7 proposal is. Is that too fast?

8 MS. JOHNSON: Yes, your Honor. We would suggest,  
9 actually, that the PSC would file a brief -- motion or brief.  
10 I'm not sure what it's styled as.

11 JUDGE ZOBEL: Motion for determination of the choice  
12 of law.

13 MS. JOHNSON: Choice of law. And we would propose  
14 filing that by mid June.

15 MS. GREER: Your Honor, if I may.

16 This issue was briefed in the motions to dismiss, and  
17 in your order on August 29th, you said that Tennessee law  
18 applied. We briefed the issue on the context of the motion to  
19 dismiss, because whether you use First Circuit or Sixth  
20 Circuit choice of law principles, it all leads to the same  
21 place, which is Tennessee as the substantive law to govern  
22 these claims.

23 JUDGE ZOBEL: Well, let's review it and see whether  
24 -- that was in a different context from the context I'm now  
25 talking about, which has to do with the trial, and if -- I

1 mean, I assume the Tennessee cases will be tried in Tennessee.  
2 At least, that's what it looks like now.

3 So, I think we ought to look at it in the context of  
4 what would be the governing law at the time of trial.

5 MS. JOHNSON: Yes, your Honor, we will do that. I  
6 will say the context --

7 JUDGE ZOBEL: June what?

8 (Discussion off the record.)

9 MS. JOHNSON: June 15th, if that's a weekday.

10 COURTROOM DEPUTY CLERK URSO: Yes.

11 JUDGE ZOBEL: Okay. And then the defendants,  
12 whichever ones are not settled and who may want to go back to  
13 their home state -- so, it's not just Tennessee. There may be  
14 some New Jersey ones and some -- I've forgotten. I think we  
15 have one Alabama case and there may be some in Texas. The  
16 appropriate defendants would file -- when would you suggest?  
17 Right after July 4th, would that be okay?

18 MS. GREER: Yes, your Honor, we can make that work.

19 COURTROOM DEPUTY CLERK URSO: So, it will be 7/6?

20 JUDGE ZOBEL: Yes.

21 COURTROOM DEPUTY CLERK URSO: Okay, 7/6.

22 JUDGE ZOBEL: 7/6.

23 And then the plaintiffs could file a short reply, no  
24 more than three pages, I think, by the week after that.

25 COURTROOM DEPUTY CLERK URSO: Would be 7/13.

1 MS. JOHNSON: Yes, your Honor.

2 JUDGE ZOBEL: Do I need to hear argument or can I  
3 decide it on the papers? What's Tennessee's view? I mean, I  
4 -- if there is New Jersey here, you might also tell me.

5 MR. GASTEL: I think the PSC would prefer argument on  
6 that, your Honor, and one clarification. How long did you  
7 want the reply brief to be?

8 COURTROOM DEPUTY CLERK URSO: Three pages.

9 JUDGE ZOBEL: Three pages.

10 MR. GASTEL: Three pages. Thank you, your Honor.

11 JUDGE ZOBEL: I don't want a reply brief at all.

12 MS. JOHNSON: How long would you like the opening  
13 brief to be, your Honor, 20 pages or less?

14 JUDGE ZOBEL: Yes, 20 pages under the rule. Each  
15 side has 20 pages, but the reply can be three pages. And then  
16 you do want a hearing?

17 MS. JOHNSON: Yes, please, your Honor.

18 JUDGE ZOBEL: We don't have anything scheduled I  
19 think in July, do we?

20 COURTROOM DEPUTY CLERK URSO: No.

21 MS. JOHNSON: I think we have a July 27th status --  
22 oh, I'm sorry, no, that's off.

23 JUDGE ZOBEL: I think August was our last --

24 MS. GREER: August 5th, your Honor.

25 MS. JOHNSON: August 5th, your Honor, would be the

1 next status conference.

2 COURTROOM DEPUTY CLERK URSO: Yes.

3 JUDGE ZOBEL: So, maybe we can add it into that and  
4 in that case we can extend the -- well, August 5th -- so, we  
5 have the hearing as a status conference on August 5th.

6 MS. JOHNSON: Yes, your Honor.

7 JUDGE ZOBEL: Will that work for you?

8 JUDGE BOAL: Yes. And I would just add, because with  
9 Tennessee and New Jersey and, I gather, there's another state  
10 that has comparative fault, as being the only states, if the  
11 choice of law is between Massachusetts and Tennessee, with  
12 respect to all the discovery motions that we heard earlier  
13 today, if Massachusetts law is going to apply, then we don't  
14 have the comparative fault discovery that we were talking  
15 about earlier today, maybe. But I don't want to hear argument  
16 on that now. I think you're absolutely right, we had plenty  
17 this morning, but I would just -- could the affected parties  
18 at least file something in a week just to let me know whether  
19 or not they think the decision is going to affect the  
20 discovery, if they can. Is that possible?

21 MS. JOHNSON: Yes. May I suggest within one week  
22 each side file a brief of no more than three pages to inform  
23 the Court of their position.

24 JUDGE BOAL: That would be helpful.

25 JUDGE ZOBEL: Now, I had so rudely interrupted you,

1 Ms. Johnson. Where were we?

2 MS. JOHNSON: All interruptions are very much  
3 appreciated, your Honor.

4 So, let's talk about -- I think I was describing what  
5 the remaining cases are, what's left in the MDL.

6 And there are three sets of motions in front of the  
7 Court that relate to scheduling issues. Before I address any  
8 of those in particular or try to argue it, I would like to  
9 just share with the Court what the PSC's view is of what's  
10 left and just broadly at a high level so that we can have the  
11 discussion to describe how we think that might be phrased or  
12 bucketed.

13 So that the remaining cases, they really fall into  
14 five buckets. I tried to make it three buckets, but, really,  
15 it's five.

16 The first would be the St. Thomas Clinics and  
17 Entities. There are 89 cases currently pending against St.  
18 Thomas in the MDL. Discovery is well underway. The case has  
19 been on file for two years. The PSC has proposed a Bellwether  
20 process to deal with the St. Thomas cases. I think we'll come  
21 back to that in a minute.

22 And just to mention it so the Court is aware, there  
23 was a motion filed for an expedited trial of the Wayne Reed  
24 case.

25 JUDGE ZOBEL: I am very much aware of that.

1 MS. JOHNSON: Counsel for Mr. Reed has asked that  
2 that be heard at the next status conference because he's not  
3 able to participate today, but I did want to just mention to  
4 the Court --

5 JUDGE ZOBEL: Well, there's no opposition filed yet  
6 and it's not due for another week or so.

7 MS. JOHNSON: That's correct. That's correct. And  
8 we don't need to be rushing to have the Court address that  
9 today, particularly when the opposition and response has not  
10 been filed yet, but we would like to have it on the agenda for  
11 the next conference.

12 The second bucket, then, would be the other Tennessee  
13 clinic cases which are cases against Specialty Surgery Center.  
14 There are 24 cases in the MDL against Specialty Surgery  
15 Center. Those cases, sometimes I think we lump in, and talk  
16 about the Tennessee defendants or the Tennessee clinics, but  
17 there are some differences between those groups, one of which  
18 that is important is that there's a newly-discovered defendant  
19 relating -- I'm sorry -- a newly-discovered defendant in cases  
20 against Specialty Surgery Center and I understand the  
21 plaintiffs need time to file motions to amend to add that  
22 defendant quickly. The time to do so is approaching.

23 The third bucket would be cases against Premier,  
24 which is a New Jersey clinic. There are 40 cases against  
25 Premier in the MDL. Discovery there is also well underway.



1           The PSC has proposed that the pretrial schedule for  
2 Premier should be -- should lag behind St. Thomas a bit, but  
3 really be the second phase of trial. I'm sorry, I said that  
4 very poorly. That phase two of trials would include Premier,  
5 and the PSC has proposed a schedule for the Premier cases that  
6 tracks but lags a little bit behind the St. Thomas schedule.

7           The fourth bucket would be cases against Box Hill,  
8 which is a clinic in Maryland. There are eight cases on file  
9 against Box Hill in the MDL. I understand that counsel for  
10 Box Hill is aware of 25 additional claims against Box Hill and  
11 counsel for plaintiffs have announced their intention to file  
12 additional cases in the MDL. That's not happened yet, but  
13 just to give a preview.

14           JUDGE ZOBEL: So, the 25 cases are in the state  
15 court?

16           MS. JOHNSON: No. Claims, not cases, your Honor.  
17 So, 25 victims who have identified that they may have causes  
18 of action against Box Hill.

19           JUDGE ZOBEL: At the moment there are eight?

20           MS. JOHNSON: Correct.

21           Box Hill is in a different category in the sense that  
22 even though the PSC served discovery requests on Box Hill  
23 quite sometime ago, Box Hill has not yet produced a single  
24 document, and while the PSC is pressing forward with  
25 discovery, trying to litigate those cases as quickly as is

1 reasonably possible, we recognize that Box Hill becomes a  
2 third tier, a third-phase defendant. We expect that they will  
3 fall somewhere behind the Premier schedule. And, again, we  
4 proposed a schedule as to how -- those specific deadlines and,  
5 in fact, I will hand up to the Court, if I may -- I apologize,  
6 your Honor. One moment.

7 (Pause.)

8 (Attorney Johnson hands document to the Court.)

9 JUDGE ZOBEL: Don't you need that?

10 MS. JOHNSON: No. I can make do.

11 MR. GASTEL: I have one in a binder.

12 JUDGE ZOBEL: I have --

13 MS. JOHNSON: I've handed up to the Court --

14 JUDGE ZOBEL: I have it already. You gave me one  
15 earlier.

16 MS. JOHNSON: Okay. Then I will take it back, if I  
17 may. Thank you.

18 JUDGE ZOBEL: Is this different from --

19 MS. JOHNSON: I think I can help you out, your Honor.

20 This is a copy of an amended proposed MDL Order 9B  
21 that the Plaintiffs' Steering Committee filed yesterday, and  
22 I've handed this up to the Court because this proposed order  
23 sets out the comprehensive schedule that the PSC is proposing  
24 for St. Thomas, Premier and Box Hill, all in one place, laid  
25 out side by side, so the Court can actually see that proposal.

1 I should note, there was an earlier version of this  
2 order that we submitted.

3 JUDGE ZOBEL: Yes.

4 MS. JOHNSON: This is amended.

5 JUDGE ZOBEL: This is number -- no.

6 MS. JOHNSON: This is modified to reflect --

7 JUDGE ZOBEL: Okay.

8 MS. JOHNSON: -- the Plaintiffs' Steering Committee  
9 also yesterday agreed that it would -- I guess we agreed that  
10 we would not fight the defendants' motions quite as hard. We  
11 agreed that we would extend the deadlines set by existing MDL  
12 Order 9 by 45 days. All of the deadlines set by MDL Order 9  
13 by 45 days.

14 So, the schedule you have in front of your Honors  
15 really is the schedule and the PSC's proposal, and I would  
16 urge the Court to use this as the guiding proposal from the  
17 PSC when considering any of the scheduling motions that you  
18 may hear today.

19 JUDGE ZOBEL: Well, are the defendants objecting to  
20 this?

21 MS. GREER: Your Honor, we haven't had a chance to  
22 respond to it yet. Our response date is not until next week.

23 JUDGE ZOBEL: Okay. So, I should assume that you  
24 will object?

25 MS. GREER: We just got it last night and we think

1 there's some issues that we need to take up.

2 MR. WOLK: And, your Honor, Chris Wolk for the  
3 Premier defendants.

4 We also object. We filed a brief objecting to the  
5 motion and the order -- I guess it was the order before the  
6 one that was filed last night. I have not seen the one that  
7 was filed last night yet. So, I can't comment on it.

8 If it's being represented that it's just extending  
9 the existing deadlines by 45 days, we do object to that, and  
10 we've also submitted to your Honor our proposal for a new case  
11 management order for your consideration.

12 JUDGE ZOBEL: Okay.

13 MS. JOHNSON: Just to be clear, you wanted to extend  
14 the deadlines by 90 days, right? So, now we've agreed to  
15 extend them by 45. So, you object to the 45 days?

16 MR. WOLK: Well, I think in my deadline -- I set  
17 forth the deadlines in my brief. I don't think it was 90  
18 days. I think I asked for common discovery to be extended to  
19 December. That was the --

20 MS. JOHNSON: Okay.

21 MR. WOLK: Maybe there's some confusion. I'd be  
22 happy to clear it up, but --

23 JUDGE ZOBEL: All right. So, what is before me is --

24 MR. WOLK: Your Honor, part of the --

25 JUDGE ZOBEL: Part of the agenda was the proposed --

1 the cross-motion to amend the Order No. 9.

2 MS. JOHNSON: And if I --

3 JUDGE ZOBEL: Now amending Order 9B.

4 MS. JOHNSON: There is no Order 9B.

5 JUDGE ZOBEL: There was a proposed Order 9B.

6 MS. JOHNSON: This is an amended proposed order. It  
7 would become an Order 9B.

8 JUDGE ZOBEL: Okay.

9 MS. JOHNSON: And if I may.

10 I understand there are a number of motions to be  
11 argued. I did want to at least identify the fifth bucket of  
12 cases for your Honor before we perhaps turn to argument.

13 JUDGE ZOBEL: Well, I wasn't looking for the argument  
14 quiet yet. I'm just trying to understand what we're talking  
15 about. So, what we're talking about is Item A-1 on the agenda?

16 MS. JOHNSON: Correct, your Honor.

17 JUDGE ZOBEL: Okay.

18 MS. JOHNSON: So, the fifth bucket of cases, then,  
19 which is addressed in Item A-1 on the agenda, are cases  
20 against clinics where there are five or fewer cases on file in  
21 the MDL, and there is a list of those clinics if you look in  
22 that proposed order that you have in front of you. At the  
23 very last page, it identifies those clinics by name. I think  
24 it's about 18 clinics, your Honor, that are on that list.

25 And in terms of those clinics, the PSC has asked in

1 its motion to amend MDL Order 9, that common discovery as to  
2 those clinics be stayed, that the deadline for common  
3 discovery as to those clinics be stayed.

4 Now, the reason that we're asking for that is there's  
5 some question about whether there could even be common  
6 discovery of a clinic that would really benefit multiple  
7 people if there are four or fewer cases. There may be more  
8 cases filed, there may not be, but at least as of right now,  
9 the PSC's strategic suggestions, that we focus on litigating  
10 those cases that we have been litigating with the majority of  
11 cases and we move forward with it.

12 Now, I want to make one important distinction, your  
13 Honor, which is this: The PSC again will reiterate that it  
14 thinks now is the time to do discovery from the settling  
15 defendants. So, when we talk about extending deadlines or  
16 staying anything with respect to these clinics of four or  
17 fewer cases, those clinics need to understand that we are not  
18 staying the deadline for completing common discovery against  
19 the settling defendants. That is to be done now, once and for  
20 all time. The PSC, I think, has conveyed that very loudly to  
21 all of those clinics as well this Court and all of the lawyers  
22 on the phone, but that is our position.

23 Now, what ultimately --

24 JUDGE ZOBEL: Sorry. Are you saying that these cases  
25 would not benefit from common discovery or that they would be

1 included in -- that everything would be stayed except common  
2 discovery as to these small defendant group?

3 MS. JOHNSON: One moment, your Honor.

4 (Pause.)

5 MS. JOHNSON: We are asking that the Court enter an  
6 order temporarily staying the deadlines for completing common  
7 discovery against those clinic and doctor defendants with five  
8 or fewer filed actions currently pending against them in the  
9 MDL, but not staying the deadline for those clinics completing  
10 discovery from the settling defendants and third parties.  
11 Meaning, the PSC doesn't want to take the resources to go and  
12 do discovery of each of those clinics, but the PSC feels very  
13 strongly that those clinics need to understand that the  
14 deadline for completing common discovery against the settling  
15 defendants will run soon. Whether that gets extended some or  
16 not, that will run and this is their opportunity to take that  
17 discovery.

18 JUDGE ZOBEL: Okay.

19 MS. JOHNSON: So, with that setup, we're turning to  
20 the agenda, your Honor, if we can.

21 There are three groups of motions that relate to  
22 scheduling issues. The first is agenda Item No. 1. That's  
23 the PSC's motion to amend MDL Order 9 and, again, that motion  
24 asks for three things:

25 It asks for the Court to stay the deadline for

1 conducting common discovery against the clinics with five or  
2 fewer cases filed against them. It asks the Court to adopt  
3 the amended proposed MDL Order 9B and set pretrial schedules  
4 as to Premier and Box Hill; and, third, it asks the Court to  
5 adopt the PSC's revised Bellwether proposal and schedule as to  
6 St. Thomas and, again, proposed amended Order 9B puts all of  
7 those in one place in one schedule for the Court to consider.  
8 The second --

9 JUDGE ZOBEL: This is something that should be argued  
10 today?

11 MS. JOHNSON: I don't think we can argue it today,  
12 your Honor. Technically, the PSC's motion was a cross motion  
13 that was opposing a scheduling motion filed by somebody else,  
14 but the time to oppose the PSC's cross motion has not run,  
15 unfortunately. And so, I understand the St. Thomas Entities  
16 did not want this heard today. I also understand that the  
17 Premier entities and the Box Hill entities do want this heard  
18 today, and we would all like the scheduling issues to be  
19 resolved. I know that much.

20 JUDGE ZOBEL: Is there any reason why -- is this for  
21 you or me? It's discovery.

22 (Laughter.)

23 MS. JOHNSON: I can tell you what we think about  
24 that, your Honor, but the real answer is the PSC has no  
25 preference which judge resolves the issue. I think



1 technically --

2 JUDGE ZOBEL: We will work on it together.

3 MS. JOHNSON: Okay. Wonderful. Wonderful.

4 JUDGE ZOBEL: So, is there any reason, since we are  
5 double-teaming you guys for once, that we not -- why can't we  
6 decide it as soon as all the papers are in? Why do we need  
7 argument?

8 MS. JOHNSON: The PSC is perfectly comfortable with  
9 that.

10 MR. WOLK: Your Honor, the only thing that I want to  
11 bring to the Court's attention is right now we have a June  
12 15th deadline, and I did have some discussions at the break  
13 about this, and I just want to be perfectly clear.

14 I don't know if your Honor is going to be able to  
15 argue this at the next conference or hear it on the papers  
16 when all the submissions are in, but it may interfere and run  
17 into that June 15th deadline that's looming right now.

18 So, I don't know if I can consent on this request. I  
19 don't know, but my proposal would be if we could get something  
20 to get that common discovery deadline pushed 45 days, 60 days,  
21 I don't know, until this can be decided by your Honor and we  
22 can -- and argued and decided and have an order entered.

23 JUDGE ZOBEL: The answer to that is that -- this was  
24 filed as of two days ago, right?

25 MS. GREER: Right.

1 MS. JOHNSON: Yes.

2 JUDGE ZOBEL: So, you will get your opposition in 14  
3 days from two days ago. Judge Boal and I will review it.  
4 We'll make a decision. That will include an extension of time  
5 for the common discovery that takes into account the time that  
6 was lost.

7 MS. JOHNSON: And --

8 JUDGE ZOBEL: And you can in your response suggest  
9 what that would be and we will, obviously, consider it. So,  
10 we will decide it without further argument, but based on these  
11 additional facts that you want to tell us that are clearly  
12 important.

13 MS. JOHNSON: And to be clear, there may not be any  
14 disagreement here on the following point:

15 The PSC has agreed to a 45-day extension of the  
16 deadline for common discovery and the other deadlines set by  
17 MDL Order 9. We've stipulated to that.

18 JUDGE ZOBEL: So, there may not even be anything to  
19 decide, but to the extent that you think there is, given the  
20 stipulation, you tell me.

21 MR. WOLK: We'll submit it to your Honor.

22 JUDGE ZOBEL: Okay. So, this will be decided on the  
23 papers.

24 JUDGE BOAL: Yes. And if I could just add, the PSC  
25 in the past has done very helpful charts that outline what the

1 differences are between the parties' proposal and it's a very  
2 useful visual. So, I would very much appreciate if we could  
3 get that once all the different proposals are in.

4 MS. JOHNSON: We will provide that for you, your  
5 Honor, and we'll try and turn around as quickly as we can  
6 after the defendants file their response.

7 JUDGE ZOBEL: Okay.

8 MS. JOHNSON: And my colleagues are correcting me,  
9 that we have stipulated to a 45-day extension of the unexpired  
10 deadlines in MDL Order 9.

11 JUDGE ZOBEL: All right. That takes care of A-1,  
12 right?

13 JUDGE BOAL: We're moving faster than this morning.

14 MS. JOHNSON: Believe it or not, we are.

15 (Laughter.)

16 MS. JOHNSON: I do think much of this, your Honor, we  
17 have covered now by our sort of free-and-loose discussion.  
18 So, maybe we can actually make some progress.

19 I think that brings us to (B), report to the Court.  
20 In terms of the status of mediation efforts, we've discussed  
21 the confirmation order and those deadlines. So, we can move on.

22 On the insurance declaratory judgment actions, which  
23 is B-3, one thing to bring to the Court's attention is that a  
24 declaratory judgment action has been filed involving Specialty  
25 Surgery Centers' insurance coverage. That lawsuit actually

1 names tort victims as defendants in that case and the tort  
2 plaintiffs have been served with copies of that complaint.  
3 They weren't pleased about it. We are now coordinating with  
4 insurance counsel on how the briefing will proceed there.

5 On No. 4, the status of discovery. Judge Boal heard  
6 this morning 4(a), motions relating to a subpoena issued on  
7 the FDA. I don't think the Court heard this morning or has  
8 ever heard MSN's request to defer or abstain, which is 4(b),  
9 but I think that's functionally moot, isn't it?

10 MR. RABINOVITZ: That is correct.

11 MS. JOHNSON: Okay. 4(c), the -- it's just an  
12 acknowledgment that Judge Boal issued an order on the motion  
13 to compel insurance from St. Thomas. So that issue has now  
14 been resolved.

15 On No. 5, status of the litigation track. There have  
16 been a number of Bellwether submissions submitted to the  
17 Court. The PSC, St. Thomas and the Tennessee Clinic  
18 Defendants have each submitted a proposal. I don't know that  
19 we need to argue that.

20 I will just say, for the PSC the amended -- proposed  
21 amended order -- I'm sorry -- proposed amended MDL Order 9B  
22 modifies what we submitted as our Bellwether schedule there to  
23 reflect the 45-day extension of deadlines, unexpired deadlines  
24 in MDL Order 9. So, I would direct the Court to that proposed  
25 order that we've been focusing on this morning as the PSC's

1 current Bellwether proposal.

2 JUDGE ZOBEL: Okay.

3 MS. GREER: And, your Honor, I would just point out  
4 that under MDL Order 9, we have 30 days to respond to each  
5 other's Bellwether submissions, which is June 17th.

6 MS. JOHNSON: So, the PSC will waive that response if  
7 the Tennessee defendants will. Our feeling is that this has  
8 been briefed ad nauseam, and we appreciate the Court affording  
9 us an opportunity to respond to each other's, but from our  
10 perspective, no response is really productive at this point.

11 MS. GREER: Your Honor, we would appreciate your  
12 guidance on that. We have not had an opportunity to respond  
13 to -- the revised order came in last night. We haven't had a  
14 chance to look at it and now that's part of their submission.

15 MS. JOHNSON: Well, that's -- just to be clear,  
16 that's different. So, there's 30 days that Judge Boal set  
17 originally for the Bellwether submissions, response to each  
18 other's Bellwether submissions, right? I'm suggesting we  
19 waive that additional response. Obviously and, of course, Ms.  
20 Puig is entitled to respond to the proposed order we just filed.

21 JUDGE ZOBEL: I think she's suggesting that you  
22 include the Bellwether response in your response to what is  
23 now Docket No. 1900.

24 MS. GREER: And that works for us.

25 JUDGE ZOBEL: Okay.

1 MS. JOHNSON: That brings us to 5(b), motions for  
2 pretrial schedule. I think we functionally addressed that  
3 already. I don't know, however, whether the Tennessee  
4 Clinics, Premier and Box Hill wish to be heard additionally on  
5 those issues.

6 MS. PUIG: We do, your Honor. Yvonne Puig for the  
7 St. Thomas Entities. We were just about to --

8 JUDGE ZOBEL: What are you responding to?

9 MS. PUIG: She just said that we think that we took  
10 up the St. Thomas Entities' motion. We did not. Judge Boal  
11 recessed today right before my motion was to be heard.

12 So, the Court can take it up today or refer it back  
13 to Judge Boal, whatever is the Court's discretion.

14 JUDGE ZOBEL: Why do we need to hear argument on  
15 every discovery motion? Can it not be decided on the briefs?

16 MS. JOHNSON: The PSC is content with that, your  
17 Honor.

18 JUDGE ZOBEL: I mean, I know you feel left out, but  
19 apart from that, do we really need oral argument on such a  
20 motion?

21 MS. PUIG: Thank you, your Honor.

22 I don't feel left out, but I do want to be heard, if  
23 only briefly and, fortunately, my argument will be vastly  
24 truncated by what occurred today for two hours, and I only  
25 regret that this Court was unable to hear it, but in brief --

1 JUDGE ZOBEL: Well, I don't want to hear the argument  
2 right now.

3 MS. PUIG: All right.

4 JUDGE ZOBEL: If you were to insist on argument,  
5 we'll figure out when we're going to do it, assuming we finish  
6 at a reasonable time today.

7 MS. PUIG: Thank you, your Honor. I appreciate it.

8 MS. JOHNSON: Agenda Item 6 is a report from the pro  
9 se liaison.

10 JUDGE ZOBEL: Lisa, we need to get in more  
11 microphones on counsel table.

12 (Discussion off the record at the Bench.)

13 MR. WOLK: Your Honor, before we move on to the next  
14 item, I have an item listed on the agenda. It's Docket No.  
15 1852. It's my motion to extend time for common discovery to  
16 December 15th. That was submitted and it was replied to, but  
17 I believe that the PSC filed a cross motion to --

18 JUDGE ZOBEL: Well, isn't that part of 1900?

19 MS. JOHNSON: Yes, your Honor.

20 JUDGE ZOBEL: And you will get a chance to respond to  
21 that.

22 MR. WOLK: And I just want to make sure that that's  
23 clear that that will all be part of the same motion and that  
24 what we are --

25 JUDGE ZOBEL: Everything that deals with extension of

1 time on common discovery issues is now in your hands to  
2 respond to.

3 MR. WOLK: Thank you, your Honor.

4 JUDGE ZOBEL: Thank you. That is, your collective  
5 hands.

6 MS. JOHNSON: They could file one collective  
7 response. Just a thought.

8 JUDGE ZOBEL: Yes, the pro -- not pro se. The --  
9 yes, pro se liaison.

10 MS. MARTIN: Yes, your Honor. Annika Martin.

11 So, my report is brief. I've had --

12 JUDGE ZOBEL: I'm glad you're doing this. I must  
13 confess, that when I went senior, I had a right to decide what  
14 cases I did not want to hear and I have eliminated all pro se.

15 (Laughter.)

16 MS. MARTIN: Well, I'm happy --

17 JUDGE ZOBEL: So, I'm happy that you're taking care  
18 of it.

19 MS. MARTIN: Thank you, your Honor.

20 So, I've been contacted by around ten people, not all  
21 of them were pro se's. So, for those that were not pro  
22 se's --

23 JUDGE ZOBEL: You instructed counsel.

24 MS. MARTIN: -- directed to talk to their counsel.  
25 And for those who were pro se's, I had some questions about



1 the ballot that I was able to answer and about filing the  
2 claims. One gentleman needed an extension of bar date. So, I  
3 helped him file that and he successfully got an extension and  
4 filed his claims. So, he's taken care of. So, everyone that  
5 has contacted me has been -- had their questions answered or  
6 has happily gone on their way.

7 JUDGE ZOBEL: Thank you.

8 MS. MARTIN: So, that is what I will continue to do.

9 MS. JOHNSON: In terms of No. 7, the status of the  
10 bankruptcy, we've already covered that.

11 In terms of No. 8, the status of appeals. The  
12 appeals have been stayed, if not dismissed, at this point.  
13 So, technically, I think it's still docketed in the First  
14 Circuit, but there's nothing going on.

15 The schedule for future status conferences. We have  
16 a June 24th conference set with Judge Boal at 11:30 and a  
17 conference with Judge Zobel at 2:00. We also have an August  
18 5th conference set with Judge Boal at 11:30 and with Judge  
19 Zobel at 2:00.

20 We'd ask that the Court schedule the September  
21 conference now. Since the August conference is August 5th, I  
22 would say sometime the first week in September, first or  
23 second week in September.

24 COURTROOM DEPUTY CLERK URSO: Well, Labor Day is on  
25 the 7th. So, you want it the first --

1 JUDGE ZOBEL: No. After that.

2 MS. JOHNSON: Let's do after that.

3 JUDGE ZOBEL: After Labor Day.

4 COURTROOM DEPUTY CLERK URSO: So, that week we could  
5 do the 9th. September 9th, that's a Wednesday.

6 MS. PUIG: I'm unable to do it on that day, your  
7 Honor. Could we do the next week?

8 COURTROOM DEPUTY CLERK URSO: The following week?

9 MS. PUIG: Yes.

10 COURTROOM DEPUTY CLERK URSO: Okay. We could do the  
11 16th or 17th of September.

12 JUDGE ZOBEL: Will that work for you?

13 COURTROOM DEPUTY CLERK URSO: Is that good for you?

14 MS. JOHNSON: I'm a little concerned that that's far  
15 out, given the number of deadlines that we have and how  
16 quickly we're trying to move on some of this.

17 COURTROOM DEPUTY CLERK URSO: What about the 8th, the  
18 day after Labor Day? That's a Tuesday.

19 MS. JOHNSON: The 8th works for the PSC.

20 COURTROOM DEPUTY CLERK URSO: What about the rest of  
21 the group? No?

22 MS. PUIG: Does not work.

23 JUDGE ZOBEL: Some of you could do it by telephone  
24 instead of traveling.

25 MS. JOHNSON: Perhaps the 10th, your Honor? I'm

1 hearing plaintiffs asking for the 10th.

2 COURTROOM DEPUTY CLERK URSO: How about the -- I'll  
3 move -- if the 10th works for everybody, I'll move what's on  
4 there. Is the 10th --

5 MS. PUIG: That's fine, yes. Thank you, your Honor.

6 COURTROOM DEPUTY CLERK URSO: Okay. September 10th,  
7 at 2:00, and I'll move what's on there. 9/10 at 2:00.

8 MS. JOHNSON: Thank you very much.

9 JUDGE ZOBEL: And, again, 11:30 and 2:00, right?

10 MS. JOHNSON: If that works for the Court, yes, your  
11 Honor.

12 COURTROOM DEPUTY CLERK URSO: Okay. I'll type Steve,  
13 okay?

14 JUDGE BOAL: Sure.

15 MS. JOHNSON: We could also --

16 JUDGE ZOBEL: We're checking on 11:30.

17 MS. JOHNSON: Yes. We also could do earlier, if the  
18 Court would prefer. I know today things got a little  
19 squashed. Although, hopefully --

20 JUDGE ZOBEL: The more time you get, the more time  
21 you will use.

22 MS. JOHNSON: I know. Don't give us any more. We  
23 don't need it. Take it back, actually.

24 Agenda Item C --

25 MR. MORIARTY: Excuse me. I'm sorry, but there is a

1 -- I hate to interrupt you, but there is something in the  
2 agenda, the first (B) that I would like to address.

3 JUDGE ZOBEL: I'm sorry, what number?

4 MR. MORIARTY: Well, (B), Ms. Johnson's prelude, or  
5 it would be under Section B, either one. There's an issue  
6 that was referred to in passing that I think deserves a little  
7 bit more attention, at least from Ameridose. There has been  
8 in --

9 JUDGE ZOBEL: Could you please tell me who you are?

10 MR. MORIARTY: My name is Matthew Moriarty. I  
11 represent Ameridose.

12 JUDGE ZOBEL: Okay. Thank you. Sorry, I should have  
13 known.

14 MR. MORIARTY: So, we have had some informal  
15 discussions with the PSC and a number of settling defendants  
16 about the actual plan that will be in place for the dismissal  
17 of the cases against the settling defendants, and I have urged  
18 the PSC to file what they're going to file as fast as possible  
19 and that we compress the timeframes for that, because it's  
20 important for the settling defendants to have some clarity as  
21 we go through all of these discovery fights as to whether they  
22 are parties or nonparties. So, it's very important for at  
23 least Ameridose and probably others, like GDC or MSN or  
24 whoever the settling entities are, to know that.

25 So, we have not exactly worked out the time deadlines

1 by mutual agreement with the PSC, but, if necessary, Ameridose  
2 will be filing supplements to that plan to compress timeframes  
3 to get answers to that more quickly. We would like all the  
4 cases dismissed before the end of June as opposed to sometime  
5 in July or August.

6 MS. JOHNSON: As we've discussed with Mr. Moriarty,  
7 the PSC can't do anything until after the effective date on  
8 this particular issue. We are mindful of it. It is not just  
9 cases in this MDL that are affected. There are state court  
10 cases as well. So, we're working through putting together a  
11 process to accomplish dismissal of those cases.

12 JUDGE ZOBEL: Do you have some idea of when you might  
13 finish the working through?

14 MS. JOHNSON: After the effective date, your Honor,  
15 and, hopefully, quickly, but we are very mindful of Mr.  
16 Moriarty's concerns and everyone's, the settling defendants'  
17 concerns that those be dealt with quickly.

18 JUDGE ZOBEL: The effective date is June 4th?

19 MS. JOHNSON: Yes, and along --

20 JUDGE ZOBEL: You want to know an exact date?

21 MR. MORIARTY: No, your Honor. I just encourage them  
22 -- because we all know when the plan effective date is. So,  
23 the work on this project can be done and a filing almost  
24 immediately after the plan effective date is done.

25 JUDGE ZOBEL: I understand Ms. Johnson to tell us

1 that they are working on it.

2 MR. MORIARTY: Right.

3 JUDGE ZOBEL: And they will do it as quickly as they  
4 can, and I have confidence that she will do everything that is  
5 necessary to be done to satisfy you.

6 MR. MORIARTY: As I do, your Honor. I just wanted to  
7 make everyone aware that we may be trying to compress time  
8 deadlines if we can't agree on what those deadlines should be.

9 JUDGE ZOBEL: Okay.

10 MS. PUIG: Your Honor, may I be heard on behalf of  
11 St. Thomas Entities?

12 We've not been a part of those discussions, nor  
13 invited to be a part of it. Is it possible that those  
14 dismissals would specify that they are without prejudice to  
15 outstanding discovery requests? Because we have discovery  
16 requests as to Ameridose.

17 MS. JOHNSON: As I say, we're working on the issue,  
18 but we have not finalized anything yet. We will continue  
19 working on it and we're mindful of what Mr. --

20 JUDGE ZOBEL: You can short circuit all of this by  
21 becoming a settling defendant.

22 MS. JOHNSON: We should, your Honor.

23 JUDGE ZOBEL: I understand that it is being attended  
24 to and I will leave it at that.

25 MS. JOHNSON: I did have one thing that I am remiss

1 for not mentioning earlier in my discussion, an issue that was  
2 raised and addressed with Judge Boal this morning, but I want  
3 to make this Court aware as well.

4 The trustee shared with me yesterday that NECC's  
5 insurers sent a letter confirming that insurance coverage for  
6 NECC ends on the effective date, which is June 4th, which  
7 means to the extent that additional expenses are incurred by  
8 Mr. Moore, those expenses will ultimately be paid out of now  
9 the settlement pot and, functionally, every dollar that's paid  
10 in expenses out of that pot reduces the recovery to tort  
11 victims.

12 I mention that to your Honor. We did address it at  
13 length with Judge Boal this morning, but the direct impact on  
14 that is as follows:

15 The more discovery that must be done and then the  
16 time that it takes to resolve discovery disputes and complete  
17 this common discovery does wind up having a negative direct  
18 fiscal impact on victims as well as the negative consequences  
19 of things just taking longer, and I wanted to bring that to  
20 the Court's attention.

21 JUDGE ZOBEL: Thank you. Excuse me one moment.

22 (Discussion off the record at the Bench.)

23 JUDGE ZOBEL: The reporter needs a break and I do,  
24 too, and you may all stretch, too.

25 (Stretch break.)

1 JUDGE ZOBEL: All right.

2 MS. JOHNSON: So, returning to the agenda, fully-  
3 briefed motions (C). On No. 10 was heard this morning. No.  
4 11 was also heard this morning, as were number -- all of the  
5 motions listed under No. 12.

6 On No. 13, the parties agreed to waive oral argument  
7 during this morning's hearing.

8 No. 14 and 15, then, are motions that have been  
9 pending for a while. I believe the Court has either already  
10 heard oral argument or it was waived.

11 JUDGE ZOBEL: No. 15 I'm denying. I've endorsed the  
12 motion today and I will file it with the Clerk.

13 MS. JOHNSON: Thank you.

14 And then that brings us to (D), your Honor, briefing  
15 in progress, and the only thing of note there is, again, the  
16 Wayne Reed motion for expedited trial, which we would like to  
17 have as early as June.

18 JUDGE ZOBEL: I'm sorry, I was looking at this so I  
19 didn't hear what you said. 14 I am to decide?

20 MS. JOHNSON: Yes, please, your Honor. I understand  
21 there's no objections to those motions. They've been pending  
22 for a while.

23 JUDGE ZOBEL: So, if there's no objection, then  
24 plaintiffs' motion for consolidation, which is 14 on the list  
25 and Docket No. 37 in one of the separate cases, 13-12657, is



1 allowed.

2 MS. JOHNSON: Thank you, your Honor.

3 MS. KELLY: I'm sorry, I believe -- I'm Caroline  
4 Kelly from Morrison Mahoney. I believe we filed an opposition  
5 today.

6 JUDGE ZOBEL: I'll leave it as decided and I'll look  
7 at it.

8 MS. KELLY: What's that?

9 JUDGE ZOBEL: I'm changing my notation to decide it  
10 rather than it is allowed. I'll look at your opposition.

11 MS. KELLY: Wonderful. Thank you.

12 JUDGE ZOBEL: This is the motion to consolidate?

13 MS. KELLY: Yes.

14 MS. DOUGHERTY: Your know, I would just like to  
15 mention that it's completely untimely. This has been pending  
16 in front of the Court for a length of time now.

17 JUDGE ZOBEL: Oh, really?

18 MS. DOUGHERTY: To oppose today is untimely and we  
19 haven't had an opportunity to --

20 JUDGE ZOBEL: So, why should I hear it?

21 MS. KELLY: If I'm referring to the correct motion,  
22 it says --

23 JUDGE ZOBEL: *Montee against Ameridose.*

24 MS. KELLY: Yeah. We filed -- we did file it today.  
25 It was filed on -- May 12th?

1 JUDGE ZOBEL: I'm sorry?

2 MS. KELLY: I have it as filed on May 12th.

3 JUDGE ZOBEL: The motion to consolidate was filed on  
4 May 12th?

5 COURTROOM DEPUTY CLERK URSO: The one that I gave  
6 you?

7 JUDGE ZOBEL: I don't know.

8 MS. JOHNSON: Your Honor, I'm going to have to check  
9 that. This is one of those just sort of cleaning up the  
10 dockets. We had no inference from any defendants that there  
11 was going to be any opposition whatsoever to this. It's just  
12 cleaning up and having two dockets --

13 JUDGE ZOBEL: I'll look it, but while we're on the  
14 subject, I have a request. And, here, I have a bunch of  
15 copies for you guys.

16 MS. JOHNSON: Oh, good.

17 JUDGE ZOBEL: So, here are a number of them for  
18 whoever wants them. Give one to Catherine.

19 COURTROOM DEPUTY CLERK URSO: Catherine, okay.

20 JUDGE ZOBEL: What we have done is to list those  
21 cases that now have separate numbers and are not in the MDL or  
22 maybe they are but they're filing motions in the separate  
23 numbers, and it is very difficult for us to follow and to  
24 catch them.

25 So, what I would like is to have the Plaintiffs'

1 Steering Committee look at these and tell me whether these are  
2 still live motions, whether they're moot, whether they've been  
3 resolved, whatever, and then I would like there to be -- I  
4 would like to enter an order that says that any motion to be  
5 filed is to be filed in the MDL and -- as a motion and then  
6 there can be a notice of motion filed from the individual  
7 case. So that if the case goes back to its original  
8 jurisdiction, all of the papers are listed in the original  
9 docket.

10 And, Ms. Johnson, if I could task you to make sure  
11 that that is implemented and that you then get a response to  
12 this list, which appears to have a pile of undecided motions,  
13 but I don't know whether they're undecided or not, and let us  
14 know what, if anything, needs to be decided and maybe even  
15 give us the docket number of the MDL, on the MDL docket, okay?

16 MS. JOHNSON: We will be happy to do that, your Honor.

17 JUDGE ZOBEL: Thank you.

18 And whatever assistance defendants can give would be  
19 much appreciated as well. So, that takes care of that. And  
20 it is related to what we were just talking about.

21 And leaving your motion then -- your opposition I  
22 will consider, but it is the result of the same problem, I  
23 think.

24 MS. KELLY: Thank you, your Honor.

25 MR. GASTEL: Your Honor, as the person at the PSC

1 most likely tasked with that task, is there any way that I  
2 could get an electronic version of this chart? That would be  
3 tremendously helpful to me.

4 JUDGE ZOBEL: Yes, we will file it immediately, but I  
5 haven't done it yet because I wanted to talk to you about it  
6 beforehand.

7 MR. GASTEL: Perfect.

8 JUDGE ZOBEL: So, it is in a shape that is to be  
9 filed electronically and will be before the end of the day as  
10 an order.

11 MS. JOHNSON: Thank you, your Honor.

12 Perhaps your Clerk could email the workable file to  
13 my attention so that we can get that to Mr. Gastel.

14 JUDGE ZOBEL: The workable file?

15 MS. JOHNSON: The Word document or Word Perfect  
16 document.

17 JUDGE ZOBEL: She'll take care of it.

18 MS. JOHNSON: Okay. Thank you.

19 That brings us to (D), briefing in progress, and the  
20 only thing to note there, your Honor, is No. 16 counsel has  
21 requested be heard at the June 24th status conference. That's  
22 the motion for expedited trial.

23 JUDGE ZOBEL: Okay.

24 MS. JOHNSON: And that's it.

25 JUDGE ZOBEL: Does anybody else have anything that we

1 need to discuss?

2 MR. GOTTFRIED: Your Honor, I just wanted to address  
3 -- I think it might be helpful -- there was a lot of  
4 discussion regarding the dates. The bankruptcy -- the trustee  
5 did file on the 26th, it's Docket 1890, a notice of entry of  
6 confirmation order and plan effective date and related  
7 deadlines. So, I think I just want to make that clear on the  
8 record that is available. People can see it and then the  
9 Court can look at it as well. It was filed two days ago.

10 JUDGE ZOBEL: Terrific. Thank you. Anybody else?

11 MS. PUIG: Your Honor, I just want to be clear.  
12 Yvonne Puig for the St. Thomas Entities.

13 Are we taking up my motion to extend time on the --

14 JUDGE ZOBEL: You have two minutes.

15 MS. PUIG: It's going to take a little longer than  
16 that, your Honor, but I'll do my very best.

17 We've asked to move the discovery deadline for common  
18 discovery by 90 days. We filed a motion in brief in support  
19 and a declaration setting out with a chart all of our efforts  
20 to gain discovery from those entities that we intend to submit  
21 as a part of a comparative fault submission to the jury  
22 ultimately. I won't go through each of those entities, your  
23 Honor. Only to say that it's been a very time-consuming  
24 undertaking as well as opposition everywhere. Again, I regret  
25 that you --

1 JUDGE ZOBEL: I'm familiar with it.

2 MS. PUIG: -- you were unable to see today. There  
3 was an ocean of opposition in those, and we are asking that  
4 the Court extend from June 14th to September 14th for the  
5 common discovery and ask that the Court consider the  
6 declaration of Adam Schramek that was filed in support of our  
7 memorandum. And I think I kept to two minutes.

8 JUDGE ZOBEL: I thank you very much.

9 Anybody else?

10 MS. JOHNSON: One sentence, your Honor?

11 JUDGE ZOBEL: Did you want to say something or are  
12 you leaving?

13 MR. RABINOVITZ: I was leaving.

14 JUDGE ZOBEL: Well, you're welcome to leave.

15 I thank you all and I will look forward to seeing you  
16 on June 24th and, in the meantime, receiving your various  
17 submissions.

18 MS. JOHNSON: Thank you, your Honor.

19 MR. GASTEL: Thank you, your Honor.

20 MS. DOUGHERTY: Thank you, your Honor.

21 (Adjourned, 3:16 p.m.)  
22  
23  
24  
25

## C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 54, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of No. 13-md-2419-RWZ, In Re: New England Compounding Pharmacy, Inc., Products Liability Litigation.

June 5, 2015  
Date

/s/Catherine A. Handel  
Catherine A. Handel RPR-CM, CRR